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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CLOCKWORK IP, LLC., a Florida limited liability company, and QUALITY A/C SERVICES, INC., a Nevada corporation doing business as QUALITY'S ONE HOUR AIR CONDITIONING AND HEATING,

Plaintiffs,

v.

ALADDIN ONE HOUR HVAC, INC., a Nevada corporation,

Defendant.

Case No. 2:12-cv-01532-MMD-PAL

**PLAINTIFFS' EX PARTE MOTION FOR
LEAVE TO CONDUCT DAMAGES
DISCOVERY AGAINST DEFENDANT
IN DEFAULT, ON ORDER
SHORTENING TIME**

Plaintiffs CLOCKWORK IP, LLC., ("Clockwork") and QUALITY A/C SERVICES, INC. doing business as Quality's ONE HOUR AIR CONDITIONING AND HEATING (collectively as "Plaintiffs"), hereby move this Court *ex parte* for an Order to conduct discovery against defaulted ALADDIN ONE HOUR HVAC, INC. ("Defendant"), on an Order Shortening Time.

Plaintiffs are seeking this order because Defendant defaulted before the Rule 26(f) conference and Plaintiffs want to clarify that it may begin discovery in the absence of that conference. Rule 26(d)(1). Plaintiffs need the discovery to establish, among other things, the scope of the infringement, the location of all infringing materials, the identities of those who may control the infringing materials, the requirements for the injunction, the profits Defendant reaped through its unlawful behavior, and related matters.

1 This Motion is made and based on this Motion, the Memorandum of Points and Authorities
2 submitted herewith, the supporting Declaration of Ryan A. Loosvelt and Exhibits, the pleadings and
3 papers on file herein, and any oral argument the Court may order.

4 DATED: November 13, 2012

DUANE MORRIS LLP

5 By: /s/ Ryan A. Loosvelt
6 Dominica C. Anderson (SBN 2988)
7 Ryan A. Loosvelt (SBN 8550)
8 Attorneys for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION****A. Procedural History**

Plaintiffs filed their Complaint on August 28, 2012. *See* Dckt. No. 1. Defendant failed to answer or otherwise appear in this action, and a Default was entered against Defendant on September 27, 2012. *See* Dckt. No. 12. Because Defendant defaulted, no Rule 26(f) conference took place. By this motion, Plaintiffs simply seek leave of court to conduct discovery without regard to the Rule 26(f) conference as described in Rule 26(d)(1). This discovery is necessary because Defendant is in exclusive possession of significant information vital to the determination of the full scope of remedial relief necessary to eliminate the infringing materials and properly compensate Plaintiffs as a result of Defendant's infringement, fraud, deceptive trade practices, unfair competition, and interference with prospective business relationships.

B. Background

This an action where Defendant is infringing Clockwork's ONE HOUR family of trademarks and related intellectual property by unlawfully using confusingly similar marks for services that are directly competitive with Clockwork's marks. Defendant's infringement and other misconduct is compromising Plaintiffs' business reputation and the value of the marks, deceiving and harming consumers by confusing them into believing that Defendant is affiliated with Plaintiffs. Defendant has been improperly using Clockwork's marks and confusingly similar marks to promote its business, including use as its trade name, its domain names, and in connection with a wide range of promotional advertising. Defendant refused to cease and desist its use of the Clockwork marks and instead continues to unlawfully use them, including contacting Plaintiffs' customers and palming itself off as Plaintiffs. Defendant's intentional and unauthorized use of the Clockwork marks is and has caused significant damage to Plaintiffs' business interests. Plaintiffs are entitled to an injunction and damages including, but not limited to, Defendant's profits, corrective advertising, damage to plaintiffs' reputation and goodwill, treble damages, damages for interference with prospective business relationships, fees and costs.

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1 **II. ARGUMENT**

2 **A. Leave To Conduct Damages Discovery Against The Defendant In Default**
 3 **Should Be Granted So That Plaintiff May Prove Its Damage And Other Forms**
 4 **of Relief In A Motion For Default Judgment.**

5 Rule 26(d) normally requires the parties to conduct a Rule 26(f) case conference prior to
 6 serving discovery. Here, the Defendant is in default, and therefore no case conference is possible
 7 nor will the Defendant provide any Rule 26(a)(1) Initial Disclosures. However, a party may seek
 8 leave of court to conduct discovery prior to a case conference being held under appropriate
 9 circumstances. Fed. R. Civ. P. 26(d)(1).¹ Because the Defendant defaulted and there will be no
 10 Rule 26(f) conference, the requirement that Defendant wait for that conference before starting
 11 discovery should not be applicable. However, in an abundance of caution Plaintiffs are seeking
 12 permission to initiate discovery.

13 Specifically, Plaintiffs initially seek to conduct a Rule 30(b)(6) deposition (*see* Exhibit 1) and
 14 propound document requests (*see* Exhibit 2). Plaintiffs also wish to reserve rights to conduct such
 15 additional discovery (including third party discovery) based on the responses to the initial discovery.
 16 This discovery is crucial to establish the scope of remedial relief Plaintiffs require to address the
 17 harm caused by Defendant's unlawful activity. For example, as part the remedies for trademark
 18 infringement, Plaintiffs may be entitled to, among other damages, up to three times Defendant's
 19 profits. 15 U.S.C. § 1117(b); *Carpet Cops, Inc. v. Carpet Cops, LLC*, 2012 U.S. Dist. LEXIS
 20 127239, Case No. 3:11-cv-00561-RCJ-VPC, *17 (D. Nev. Sept. 6, 2012). Such information is
 21 exclusively within Defendant's possession. Plaintiffs must also be allowed to discover the extent of
 22 harm done to their business reputation, to prospective customers, as well as the extent of damages it
 23 may take for corrective advertising. Further, Plaintiffs also need to discover all the instances of

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 26 ¹ Upon a motion for default judgment, the court may "conduct hearings or make referrals" when it
 27 needs to "determine the amount of damages." Fed. R. Civ. P. 55(b)(2). To the extent the Court
 28 determines this to be the more appropriate procedure to obtain damages discovery of a defaulted
 defendant, Plaintiffs request this motion be alternatively construed as a Rule 55(b)(2) motion for
 referral to conduct damages discovery against the defaulted Defendant.

1 infringement by Defendant and to obtain the necessary information to remove all such infringement
2 from public view.

3 Defendant is in default. It has refused to appear and defend itself in this case, preventing a
4 case conference from being conducted. Defendant cannot be allowed to shield itself from damages
5 by refusing to participate in this action. Therefore, even though no case conference has been
6 conducted, this Court should grant Plaintiff leave to conduct discovery without having to conduct a
7 Rule 26(f) conference, as the lone Defendant in this case has refused to appear and participate.

8 **III. CONCLUSION**

9 For the foregoing reasons and arguments, Plaintiffs respectfully request that this Court waive
10 any requirement that a Rule 26(f) conference occur and permit Plaintiffs to commence discovery.

11 DATED: November 13, 2012

DUANE MORRIS LLP

12 By: /s/ Ryan A. Loosvelt

13 Dominica C. Anderson (SBN 2988)

14 Ryan A. Loosvelt (SBN 8550)

Attorneys for Plaintiffs

15 **DECLARATION OF RYAN A. LOOSVELT**

16 I, Ryan A. Loosvelt, declare:

17 1. I am an attorney at law duly licensed to practice before the state and federal courts of
18 the State of Nevada, and am an attorney in the law firm of Duane Morris LLP, counsel to Plaintiffs
19 CLOCKWORK IP, LLC., and QUALITY A/C SERVICES, INC. I know the following of my own
20 personal knowledge and could and would testify competently thereto if called upon to do so. As to
21 any matters stated on information and belief, I believe my information to be true and correct and will
22 so testify.

23 2. I make this declaration in support of Plaintiffs' Ex Parte Motion for Leave to Conduct
24 Damages Discovery Against Defendant In Default on an Order Shortening Time.

25 3. Attached as Exhibit 1 is a true and correct copy of Plaintiffs' proposed Rule 30(b)(6)
26 Notice of Deposition.

/s/ Ryan A. Loosvelt
Ryan A. Loosvelt

DATED: November 19, 2012

EXHIBIT 1

EXHIBIT 1

Dominica C. Anderson (SBN 2988)
Ryan Loosvelt (SBN 8550)
DUANE MORRIS LLP
100 North City Parkway, Suite 1560
Las Vegas, NV 89106
Telephone: 702.868.2600
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E-Mail: dcanderson@duanemorris.com
rloosvelt@duanemorris.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

CLOCKWORK IP, LLC, a Florida limited liability company, and QUALITY A/C SERVICES, INC., a Nevada corporation doing business as Quality's ONE HOUR AIR CONDITIONING AND HEATING,

Plaintiffs,

v.

ALADDIN ONE HOUR HVAC, Inc., a Nevada corporation,

Defendant.

Case No. 2:12-cv-01532- MMD-PAL

**PLAINTIFFS' NOTICE OF
DEPOSITION OF PERSON(S) MOST
KNOWLEDGEABLE AT ALADDIN
ONE HOUR HVAC, INC.**

Date: November __, 2012
Time: 9:00 a.m.
Location: Duane Morris LLP
100 North City Parkway,
Suite 1560
Las Vegas, Nevada 89106

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Rule 30 of the Federal Rules of Civil Procedure ("FRCP"), Plaintiffs through counsel, will take the deposition upon oral examination of the Person(s) Most Knowledgeable at Aladdin One Hour HVAC, Inc. ("Aladdin Defendant's PMK") as to the matters on which examination is requested as set forth below.

The deposition of Aladdin Defendant's PMK will take place on November __, 2012, at the law offices of Duane Morris LLP located at 100 North City Parkway, Suite 1560, Las Vegas, Nevada 89106; telephone number 702.868.2600, commencing at 9:00 a.m.

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1 The deposition will be taken before a certified court reporter and will continue from day to
2 day until completed. The deposition testimony will also involve a real-time computer connection
3 between the deposition-taker and stenographer using software such as "Live Note." Notice is hereby
4 given that the deposition will be recorded by stenographic method and through instant visual display
5 of the testimony pursuant to the provisions of FRCP 30. The deposition may also be recorded by
6 videotape and/or audiotape pursuant to the provisions of FRCP 30.

7 **SUBJECT MATTERS OF TESTIMONY**

8 1. The facts and circumstances related to the corporate formation of Defendant,
9 including its capitalization, funding, and the reason for including "One Hour" or "1 Hour" in its
10 business name, service marks and advertising.

11 2. Any investigation Defendant performed before starting to use "One Hour" or "1
12 Hour".

13 3. Defendant's knowledge of the Clockwork Marks.

14 4. Defendant's knowledge of Plaintiff's use of the Clockwork Marks.

15 5. The identity and contact information of each customer of Defendant with each date
16 Defendant provided service to each customer, the service provided and the amount paid for each
17 service.

18 6. Defendant's communication with customers and potential customers.

19 7. The identity and job description of all current and former employees of Defendant.

20 8. Defendant's knowledge of each Plaintiff, including each Plaintiff's service marks,
21 advertising practices, business practices and business reputation.

22 9. The reasons Defendant persists with its infringing behavior despite Plaintiffs'
23 demands and Defendant's own promises to stop.

24 10. Defendant's sales information since inception of Defendant.

25 11. Defendant's revenue and expenses from its inception, including information on all of
26 Defendant's financial statements, profit and loss statements, general ledgers, and all other financial
27 accounts of Defendant since Defendant was formed.

28 12. The identity and all facts and circumstances regarding all third parties who have

1 assisted Defendant in the use of "One Hour" or "1 Hour" in Defendant's advertising.

2 13. All facts and circumstances relating to all of Defendant's advertising.

3 14. Any investigations performed by Defendant regarding the availability of "One Hour"
4 or "1 Hour" for use in Defendant's advertising.

5 15. Any legal advice that Defendant received on in connection with its use of "One Hour"
6 or "1 Hour" in its advertising.

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DUANE MORRIS LLP

9 Dated: _____

By: _____
Dominica C. Anderson
Ryan Loosvelt
Attorneys for Plaintiffs

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EXHIBIT 2

EXHIBIT 2

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6 Attorneys for Plaintiffs

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF NEVADA**

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11 CLOCKWORK IP, LLC, a Florida limited liability
12 company, and QUALITY A/C SERVICES, INC., a
Nevada corporation doing business as Quality's
13 ONE HOUR AIR CONDITIONING AND
HEATING ,

14 Plaintiffs,

15 v.

16 ALADDIN ONE HOUR HVAC, Inc., a Nevada
17 corporation,

18 Defendant.

Case No. 2:12-cv-01532- MMD-PAL

**PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS
PROPOUNDED ON ALADDIN ONE
HOUR HVAC, INC.**

19
20 **PROPOUNDING PARTY:** Plaintiff, CLOCKWORK IP, LLC

21 **RESPONDING PARTY:** Defendant, ALLADIN ONE HOUR HVAC, INC.

22 **SET NUMBER:** ONE

23 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff, CLOCKWORK IP,
24 LLC, , by and through their undersigned attorneys, hereby request that Defendant ALADDIN ONE
25 HOUR HVAC, INC., ("Defendant") produce all DOCUMENTS requested herein for inspection and
26 copying and respond to each DOCUMENT request propounded herein in writing, separately and
27 fully, and serve copies of such DOCUMENTS and responses on the undersigned attorney for
28 Plaintiff, CLOCKWORK IP, LLC at the offices of Duane Morris LLP, 100 N. City Parkway, Suite

1 1560, Las Vegas, NV within thirty (30) days after service of this set of requests for production of
2 documents.

3 DEFINITIONS

4 The terms "YOU," "YOUR" and "YOURS" shall mean, ALADDIN ONE HOUR HVAC,
5 INC. and all other persons who, with respect to the subject matter of each individual document
6 request herein propounded upon you, are or were acting on your behalf or under your direction or
7 control.

8 The term "DOCUMENT" is used in its customary broad senses and includes, without
9 limitation, any writing and each original, or a copy in the absence of the original, and every copy
10 bearing notes or markings not present on the original or copy of the following items however
11 produced or reproduced, namely: books, accounting records of any nature whatsoever, agreements,
12 communications, correspondence, forms, e-mails, cables, telexes, memoranda, recordings, studies,
13 notes, summaries or records of telephone conversations, notes, summaries or records of personal
14 conversations or interviews, diaries, letters, forecasts, statistical statements, graphs, notebooks,
15 charts, graphs, plans, sketches, drawings, video tapes, films, slides, information bearing
16 photographic products of any nature whatsoever, photo-records, microfilms, tape recordings,
17 minutes or records of meetings or conferences, expressions or statements of policy, lists of persons
18 attending meetings or conferences, notes, reports or summaries of investigations, opinions or reports
19 of consultants, patent appraisals, opinions of counsel, records, reports or summaries of negotiations,
20 sales literature of any nature whatsoever, brochures, catalogues, catalogue sheets, pamphlets,
21 periodicals, advertisements, circulars or trade letters, press releases, trade releases, publicity releases,
22 new product releases, reprints, drafts of any documents, working papers, indices, original or
23 preliminary notes, computer printouts, and other computer data compilations from which
24 information can be obtained or translated, if necessary, by the defendant through detection devices
25 into reasonably usable form. The term document also refers to any tangible object other than a
26 document as described above, and includes objects of every kind and nature such as, but not limited
27 to, prototypes, models, specimens, compact disks and floppy disks.

28 The term CLOCKWORK MARKS shall have the meaning given to it in the complaint filed

1 in this case.

2 The term "COMMUNICATION" or "COMMUNICATIONS" shall mean any oral, written,
3 or electronic communication, whether tangible or intangible, regardless of form, whether made in
4 person, transmitted through wires, telephone lines, cable lines, the mail, private letter carriers,
5 Federal Express, air delivery systems, messenger, television or radio frequencies, including any use
6 of Spectrum, microwaves or other broadcast means.

7 The term "INCLUDING" shall mean "including, but not limited to."

8 The term "REFLECT" shall mean to be pertinent, appertain, apply, bear on (or upon),
9 concern, pertain, or refer.

10 The term "RELATE" shall mean to bring into or link in logical or natural association or to
11 establish or demonstrate a connection between.

12 The terms "REFER" or "RELATE TO" or "RELATED TO" as used herein shall mean, in
13 addition to the customary and usual meaning of those words, evidencing, constituting, mentioning,
14 embodying, identifying, discussing, supporting, contradicting, memorializing, describing,
15 summarizing, referring to, pertaining to, or purporting to constitute the subject matter referred to in
16 the request.

17 INSTRUCTIONS

18 1. If, in responding to these Requests, the responding party encounters any ambiguities
19 when construing a request or definition, the response shall set forth the matter deemed ambiguous
20 and the construction used in responding.

21 2. Whenever in these Requests you are asked to identify or produce a document which is
22 deemed by you to be properly withheld from production for inspection or copying:

23 (a) If you are withholding the document under claim of privilege (including, but
24 not limited to, the work product doctrine), please provide the information set
25 forth in Fed. R. Civ. P. 26(b)(5) and L. Civ. R. 34.1, including the type of
26 document, the general subject matter of the document, the date of the
27 document, and such other information as is sufficient to identify the
28 document, including, where appropriate, the author, addressee, custodian, and

1 any other recipient of the document, and where not apparent, the relationship
2 of the author, addressee, custodian, and any other recipient to each other, in a
3 manner that, without revealing the information claimed to be protected, will
4 enable this party to assess the applicability of the privilege or protection
5 claimed by you;

6 (b) If you are withholding the document for any reason other than an objection
7 that it is beyond the scope of discovery or that a request is unduly
8 burdensome, identify as to each document and, in addition to the information
9 requested in Paragraph (2.A), above, please state the reason for withholding
10 the document.

11 3. When a document contains both privileged and non-privileged material, the non-
12 privileged material must be disclosed to the fullest extent possible without thereby disclosing the
13 privileged material. If a privilege is asserted with regard to part of the material contained in a
14 document, the party claiming the privilege must clearly indicate the portions as to which the
15 privilege is claimed. When a document has been redacted or altered in any fashion, identify as to
16 each document the reason for the redaction or alteration, the date of the redaction or alteration, and
17 the person performing the redaction or alteration. Any redaction must be clearly visible on the
18 redacted document.

19 4. It is intended that this Request will not solicit any material protected either by the
20 attorney/client privilege or by the work product doctrine which was created by, or developed by,
21 counsel for Plaintiff after the date on which this litigation was commenced. If any Request is
22 susceptible of a construction that calls for the production of such material, that material need not be
23 provided and no privilege log pursuant to Fed. R. Civ. P. 26(b)(5) will be required as to such
24 material.

25 5. These requests shall be deemed to be continuing in nature. With respect to any of the
26 following document requests or parts thereof, as to which Car-Win, after producing documents
27 acquires or locates additional documents or information, the undersigned requests that defendant
28 make a timely supplemental disclosure and production thereof.

1 6. If production of any requested document(s) is objected to on the grounds that
2 production is unduly burdensome, describe the burden or expense of the proposed discovery.

3 7. These Requests shall be deemed continuing so as to require supplemental responses if
4 Plaintiff acquires any additional information between the time a response is served and the time of
5 trial.

6 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

7 1. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO any investigation
8 performed by Defendant into the availability of "One Hour" or "1 Hour" for use in Defendant's
9 advertising.

10 2. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO any
11 COMMUNICATION, INCLUDING internal COMMUNICATIONS and discussions regarding any
12 belief on Defendant's part that it was not infringing on the CLOCKWORK MARKS.

13 3. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO any investigation
14 Defendant performed to determine if Defendant could lawfully use the CLOCKWORK MARKS.

15 4. ALL DOCUMENTS that include the phrase "One Hour" or "1 Hour."

16 5. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO the
17 CLOCKWORK MARKS.

18 6. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO the creation,
19 production, cost and a distribution of Defendant's advertising.

20 7. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO any
21 COMMUNICATION between YOU AND either Plaintiff or any representative of any Plaintiff.

22 8. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO the identity,
23 contact information, and/or job description of any current or former employee or shareholder or
24 officer of Defendant.

25 9. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO each of
26 Defendant's current or former customers, INCLUDING with respect to each customer, the
27 customer's identity, the customers address, phone number and email address, the services Defendant
28 performed for each customer and products sold to each customer, the date of each service or sale, the

1 price charged by Defendant for each service or sale, and the price paid by the Customer for each
2 service or sale.

3 10. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO Defendant's sales
4 of service and products since Defendant's inception.

5 11. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO Defendant's costs
6 and expenses relating to Defendant's sale of service and products since Defendant's inception.

7 12. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO Defendant's
8 advertising, INCLUDING its creation, production, placement and cost.

9 13. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO any persons or
10 entities that assisted Defendant with any aspect of Defendant's advertising, including the names,
11 addresses, phone numbers or each such person or entity.

12 14. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO how Defendant
13 selected the phrase "One Hour" or "1 Hour" for use by Defendant.

14 15. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO ALL advertising by
15 Defendant since Defendant's inception.

16 16. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO ALL
17 COMMUNICATIONS by Defendant relating to Defendant's use of the phrase "One Hour" or "1
18 Hour."

19 17. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO ALL
20 communications between Defendant and Defendant's customers.

21 18. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO the formation of
22 Defendant, INCLUDING Articles of Incorporation and Bylaws.

23 19. ALL DOCUMENTS that DISCUSS, REFLECT, or RELATE TO any of Defendant's
24 board meetings, INCLUDING any and all Board Minutes since Defendant's inception.

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